

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARCADIO HERNANDEZ-SOTO
Plaintiff
vs
UNITED STATES OF AMERICA
Defendant

CIVIL 13-1451CCC

MEMORANDUM ORDER

This matter comes before the Court on petitioner Arcadio Hernández-Soto's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence filed on June 11, 2013 (**docket entry 1**). A response in opposition to the motion was filed by the government on August 26, 2014 (docket entry 3).

Petitioner was sentenced on September 13, 2012 and filed a timely notice of appeal on September 18, 2012. That appeal from the judgment of conviction, U.S.C.A. Case Number 12-2210, is still pending.

In United States v. Weekes, 611 F.3d 68, 71-72 (1st Cir. 2010), cert. denied 131 S. Ct. 3021 (2011), the Court of Appeals noted the following: "We have long recognized that 'in the absence of extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending.' United States v. Gordon, 634 F.2d 638, 638 (1st Cir. 1980)." There are no extraordinary circumstances present here which would prevent us from denying petitioner's motion without prejudice in accordance with United States v. Weekes, 611 F.3d at 71. The law in this Circuit is clear on the matter of a direct appeal running at the same time as a collateral attack. United States v. Brooks, 145 F.3d 446, 455-56 (1st Cir. 1998); United States v. Díaz-Martínez,

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71 F.3d 946, 953 (1st Cir. 1995); see González-Franco v. United States, 2014 WL 1344124 at *1 (D.P.R. 2014). It is simply contrary to the orderly administration of justice.

In view of the above, petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence filed on June 11, 2013 (**docket entry 1**) is DENIED, without prejudice, for being premature. Judgment shall be entered accordingly.

No certificate of appealability will be issued since there is no substantial showing of the denial of a constitutional right within the meaning of Title 28 U.S.C. § 2253(c)(2). Miller-El v. Cockrell, 537 U.S. 322, 336-38, 123 S. Ct. 1029 (2003); Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595 (2000); Lassalle-Velázquez v. United States, 948 F. Supp. 2d 188, 193 (D.P.R. 2013).

SO ORDERED.

At San Juan, Puerto Rico, on January 30, 2015.

S/CARMEN CONSUELO CEREZO
United States District Judge